United States District Court
Southern District of Texas

Case Number: 05CV1847

ATTACHMENT

Description:

☐ State Court Record ☑ State Court Record Continued

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VOL. II OF VIII

No. _____ CCRA No. 71863

GERALD CORNELIUS FUDRIDGE
Appellant

_____
Offense *Punishment*

_____
County.

_____ MOTION FOR
REHEARING IS _____.
_____ 19____.

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JUSTICE

Trial Court _____
Trial Court No. _____
Trial Judge _____
Disposition _____
Date _____
Justice _____ P.C. _____ S _____
Panel _____ Quarter _____ En Banc _____
S/F Vols. 2-6
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Response _____
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TRIAL COURT NO. 9403201

APPELLATE COURT NO. _____

IN THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

AT AUSTIN

GERALD CORNELIUS ELDRIDGE,

Appellant,

VS.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM 178TH DISTRICT COURT OF HARRIS COUNTY, TEXAS

Judge William T. Harmon Presiding

STATEMENT OF FACTS

VOLUME 6 OF 36 VOLUMES

March 2, 1994

Ida M. Garcia
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

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March 2, 1994

CONTESTED COMPETENCY HEARING

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VOLUME 6

CAUSE NO. 9403201

STATE OF TEXAS IN THE 178TH DISTRICT COURT

VS. OF

GERALD CORNELIUS ELDRIDGE HARRIS COUNTY, TEXAS

A P P E A R A N C E S:

For the State: Ms. Elsa Alcala
Mr. Don Smyth
Assistant District Attorneys
Harris County, Texas

For the Defendant: Ms. Danice Crawford
Mr. Wayne Hill
Attorneys at Law
Houston, Texas

BE IT REMEMBERED that upon this the 2nd day of March A.D. 1994, the above entitled and numbered cause came on for continued competency hearing before the Honorable William T. Harmon, Judge of the 178th District Court of Harris County, Texas, and a jury; and the State appearing by counsel and the Defendant appearing in person and by counsel, the following proceedings were had, viz:

THE COURT: Both sides ready to proceed?

MS. ALCALA: Yes, sir.

THE COURT: You may call your next witness.

MS. ALCALA: Doctor Brown.

THE COURT: Doctor Brown, please raise your right hand.

(Oath administered to witness Doctor Brown by the court)

JEROME BROWN

was called as a witness by the State and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. ALCALA:

Q. Can you, please, state your name?

A. Jerome Banks Brown.

Q. Where do you work, sir?

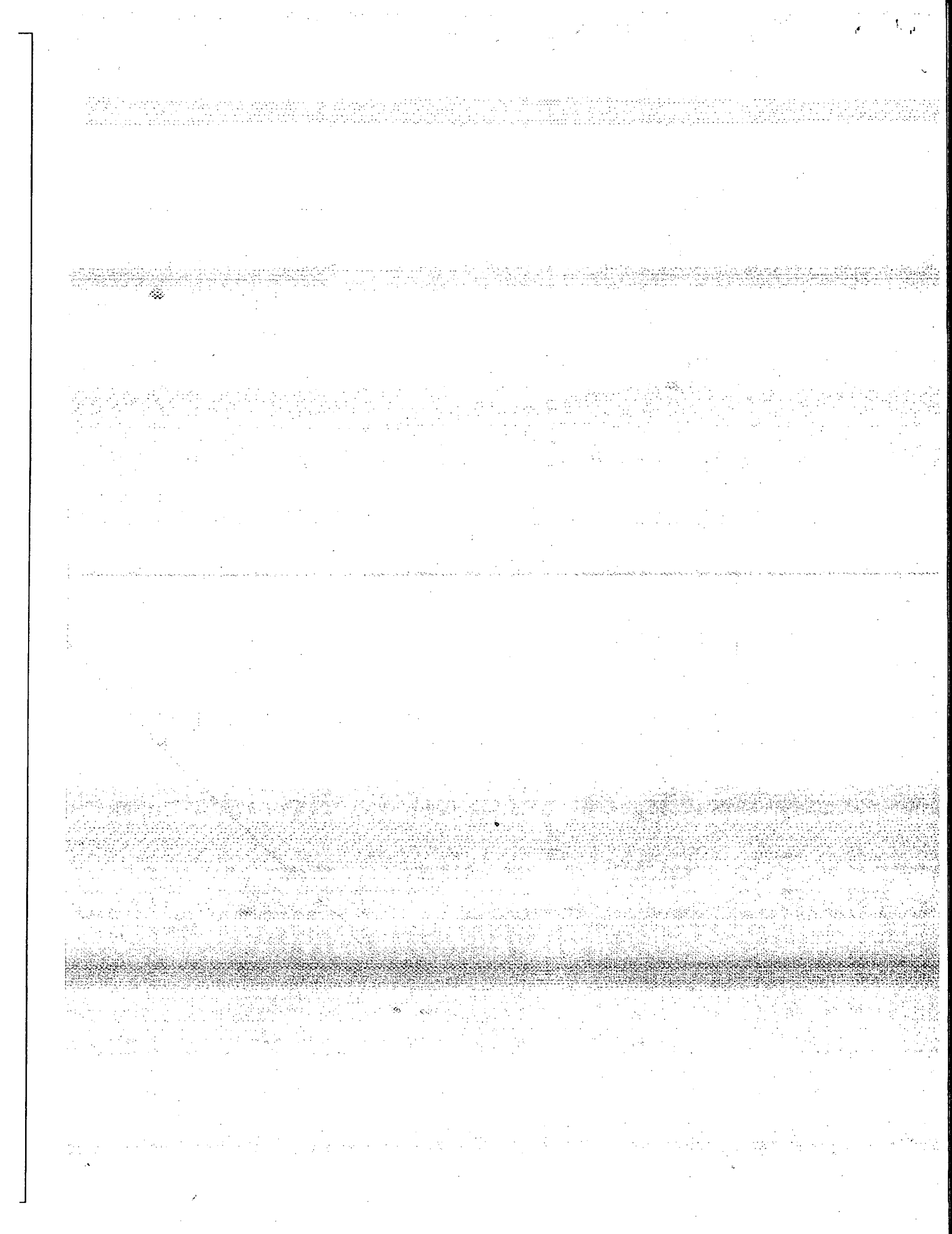
A. I am a mental health professional and clinical psychologist.

Q. Do you have a practice?

A. Yes, I do.

Q. What's the name of your practice?

A. I'm in practice with a group of associates called Brown Nelson Petzoid &



criminal defendants in the jail, how is it that that comes about?

A. Well, I'm a member of what they call the Harris County Forensic Psychiatry Unit, which is a county supported group of mental health professionals, both psychiatrists and psychologists, who examine criminal defendants upon court order regarding their competency to stand trial or their sanity at the time the offense occurred.

Q. How many of you all are in that group that are chosen to see defendants at the jail?

A. I think right now there are about six of us that do the work.

Q. Okay. Can you name them?

A. Yes. There is Doctor Silverman, Doctor Ubah, Doctor Jennings, Doctor Stone, there was a Doctor Arfa until recently, and myself.

Q. And who picks those individuals to form up this group of five or six people and see people at the jail?

A. They're hired by the Harris County Mental Health and Mental Retardation Authority, and the administration of that authority hire

the mental health professionals on contract.

Q. Do they have any -- I am sorry -- do they have any qualifications or standards to decide who they're going to pick to do these types of psychiatric evaluations?

A. Yes. They must be licensed mental health professionals in the state in which they practice. The psychiatrists I think have to be board certified. The psychologists have to be licensed, have a background or experience or history in forensic psychology, which is courtroom testimony, courtroom examinations.

Q. Who is the least experienced out of the six of y'all?

A. Doctor Jenkins, probably.

Q. And how long has he been in practice?

A. He has been doing this work with the unit for about two years now.

Q. Everybody else has been there longer than that?

A. Yes.

Q. So how does that work? Who then tells you which inmate to go do a psychiatric evaluation on?

A. Well, we do it, of course, on court

order, so the first thing we do is receive a court order sent from the court of jurisdiction, and the cases are assigned to the members of the unit on a rotating basis; just as they come in, they're assigned, we see them as they're assigned to us.

Q. So the judge appoints the individuals who do that work for MHMRA to see a person at the jail?

A. Well, he will send it to the forensic unit, then the rotation of the unit will determine who exactly does the work.

Q. So one of the five or six of y'all would then see the person?

A. That's right.

Q. Okay. Tell me a little bit about your education and your background that enables you to be a psychologist.

A. Well, I have a bachelor's degree from Rice University I received in 1963 in psychology; then attended University of Houston graduate school of psychology where I completed master's in 1967, then a Ph.D. degree in clinical psychology in 1969. I served a two year internship at the Houston V.A. Medical

Center in the psychiatry section, and for the past twenty-five years have been practicing as a licensed psychologist in the State of Texas.

Q. What is forensic psychology?

A. Forensic psychology is the application of the profession of psychology to courtroom matters or courtroom cases.

Q. And is that what you do in fact in your position with the MHMRA?

A. That's right.

Q. How long have you been doing what you do for the MHMRA?

A. About twenty-five years

Q. Okay. Interviewing defendants at the jail?

A. That's right.

Q. All right. And how many times, then, or how many years have you been examining defendants to decide the issue of competency?

A. Twenty-five years.

Q. All right. Can you possibly tell us a number of people that you have seen in the past twenty-five years to decide whether they're competent to stand trial?

A. It would be about five to six thousand

defendants.

Q. Okay. Of those people, have you found that some of those people are incompetent to stand trial?

A. Oh, yes, there are many of them that are.

Q. And have you also found that some of them are competent to stand trial?

A. That's right.

Q. Did you in fact see a person by the name of Gerald Eldridge?

A. Yes.

Q. And where was that and when did you see him?

A. I first saw Mr. Eldridge on October 13th of '93.

Q. Did you see him again?

A. Yes, I did.

Q. And when was that?

A. That was on February 18th of this year.

Q. All right. Were you the psychologist who initially was assigned to Mr. Eldridge?

A. I don't think so. I think Doctor Silverman was the first one to see him.

Q. That was a random assignment?

A. Yes.

Q. We mentioned a little while ago board certified. Is there such a thing as board certified psychologists?

A. No, there is not. There is not an equivalent qualification for psychologists. The license usually allows them to practice in their area of competence.

Q. So only board certified psychiatrists?

A. That's right.

Q. But you referred to them as licensed; is that right?

A. Right.

Q. And you said that you are licensed in psychology?

A. Yes.

Q. What do you have to do to get licensed in psychology?

A. Well, you have to submit your academic credentials and training credentials to the Texas State Board of Examiners of Psychologists, then you have to pass a written exam as well as an oral exam.

Q. When did you become licensed in psychology?

A. Well, the licensing law began in Texas in 1971. I was licensed at that time.

Q. All right. Do you know if Doctor Silverman is licensed in psychology?

A. Yes, I know he is.

Q. We were talking about the fact that you saw Mr. Eldridge at the jail. If you weren't the initial psychologist assigned to him, how is it that you got involved in his case?

A. It's not unusual, it did happen in this case that a second opinion was requested by Doctor Silverman.

Q. Why would a psychologist who is deciding the issue of competency want a second opinion? Why would he himself ask for a second opinion?

A. Usually because the case provides some kind of difficulty or special nature that the assistance or opinion of another colleague would be helpful to either the court or to the psychologist making the referral. If there is any kind of question that might come up about his competency at that time, a second opinion is often requested.

Q. Have you yourself asked for second opinions before?

A. Yes, I have.

Q. Did you give a second opinion in this case?

A. Yes, I did.

Q. Tell the jury what your opinion was, based on your evaluation of Mr. Eldridge when you saw him first in October.

A. The opinion that I formulated after my contact with Mr. Eldridge in October was that he was malingering or feigning mental illness.

Q. Then you told me you saw him again in February of '94. What is your opinion or your evaluation of Mr. Eldridge in February of 1994?

A. I felt the same about him. I felt he was still trying to fake mental illness.

Q. I want to break this down so that we don't get confused about what happened in one session versus what happened in another session. So I first want to talk to you about your October evaluation.

Did you make a report in that case?

A. Yes, I did.

Q. And do you have the report with you

right now?

A. Yes, I do.

Q. Okay. And would you periodically be looking at the report to refresh your memory?

A. Yes. I think it's there on your desk right now. You have it, but I did review it, yes.

Q. Do you have your report with you or not?

A. Not at this moment, no.

Q. Okay. All right.

A. Let me check my case. Here it is. I have it in my briefcase.

Q. Okay. I'd gotten worried.

Let me first talk to you about when you saw him in October. Give me the date first when you saw him in October.

A. October 13th.

Q. All right, 1993?

A. Right.

Q. Then you filed your report on what day?

A. Probably four, five days later.

Q. What date is on your report that you did your report?

A. October 13th. That's when I dictated

the report, right after I saw Mr. Eldridge.

Q. Tell me about that session. First, generally what did you do in that session in terms of what -- how long were you with him?

A. Probably fifteen or twenty minutes. I need to point out this was not a usual examination of this man. He was behaving in a very uncooperative way, so I was not able to perform the usual kind of examination of a defendant.

Q. Okay. So, in that time period, tell me, generally speaking, what you did, then we'll get into specifics after that.

A. Well, the procedure that was followed was more or less the same as is always followed. He was transferred from his jail tank in the central jail building to the third floor of the forensic psychiatric unit where we see all defendants, and was placed in a holdover cell there for awhile. Then, when I came to see him, or get him, he was taken from the holdover cell by one of the psychiatric aids on the floor, brought together with me around the corner to an interview room, where we sat down, and I would start talking at that point. At

that point, though, things varied from the usual evaluation from then on.

Q. When he got into the room with you, what was the first thing that happened?

A. As I recall, he was fairly compliant coming to the interview room. Sat down and began shaking his leg vigorously at that point.

Q. Then what happened?

A. I then asked him if he knew if the evaluation was going to take place or if he knew that he was going to be seeing a doctor. He didn't respond to this. I then tried to give him his warning. In other words, I say warning, it's a statement we make at the beginning of the interview that the person can end the interview at anytime, they can refuse to answer the questions if they wish and that the purpose of the evaluation was to determine if they're able to participate in court and go ahead with the court proceedings that will be taking place. I wasn't able to finish this because he started moaning and putting his head in his hands and rubbing his head very vigorously with his hands at that point.

Q. Can you show the jury what he was

doing?

A. Well, kind of leaning over like this, his hands doing like that. He would then start talking about don't let them kill me. He would cry, but there were no tears. In other words, he sobbed and things, but there were no tears evident. Then his leg stopped shaking as he was doing this. His leg didn't shake anymore after that except on occasion when he would be sitting still, then his leg would start shaking again, then he'd stop after a couple of minutes. He continued like this pretty much through the time I talked with him. He wouldn't answer any questions directly. He said "I don't know" to almost any question asked, even simple questions such as when was his birthday, what's his full name, where was he born, how far did he go in school, what his home address was. So he said he didn't know any of this or did not respond when I asked.

Q. So he doesn't even known his own name?

A. Right.

Q. What other information did you try to get from him?

A. I asked him how long he had been in jail, asked him whether or not he had an attorney. He said he didn't know to these. He would also spontaneously just say things, they weren't answers to questions, would just start making statements like they want to kill all the blacks or they want to kill me, don't let them kill me, then he said later that he wanted to run away, he said mean lady burned a candle on him, you know, fairly nonsensical kind of arbitrary statements like this. After it became evident that he wasn't going to answer questions directly, that he wasn't going to cooperate, that he would continue in these theatrical and contrived behaviors, I determined that he was uncooperative and unavailable for any reasonable interviewing and I asked him to follow me back to the holdover tank, at which point he refused or did not move. Then it was necessary to call in the psychiatric aids. They talked him into coming with them, which he did, but then he scuffled with the aids trying to put him back into the holdover tank, and was given, was subdued but had to be given a shot of a mild tranquilizer in order to calm down. He had

worked himself up into some kind of I would say emotional state that was very agitated and upset by that time.

Q. Okay. Were you able to get any more information from him other than I don't know to every question?

A. Not really, no. He never answered a question directly; all he would do would make these statements, these peculiar statements.

Q. All right. Did you review any records at that point before coming to your diagnosis that you thought he was malingering?

A. Yes, I did.

Q. What records did you review?

A. At that point, I reviewed the treatment unit records, because he was already on the treatment unit for observation at that time, I think at Doctor Silverman's request. And the treatment unit records pretty well confirmed what I was feeling by then anyway, which was that he was faking mental illness.

Q. What did you find to be particularly significant from the treatment records with regard to malingering?

A. Well, by October 13th of '93, he had

been seen by, you know, large number of forensic unit staff, caseworkers; he'd been on the unit for like six weeks in early 1993; he was there again in October of '93, where he was seen by other members of the forensic psychiatric unit staff. The opinions that I found in the records were quite consistent. There was never any question on anyone's part who saw him, even the psychiatric residents who were in training there were of the impression that he was malingering. So, again, among the treatment unit staff that I had access to, including the notes, observations written down by the doctors there on the unit, it was very consistent. In fact, it was unanimous that he was faking, that he was not really suffering from any severe mental illness.

Q. You talked about his presentation to you. I mean, I guess you would agree that what you observed in your interviewing of him was bizarre?

A. Yes.

Q. All right. So why is it, then, that you look at the bizarre behavior and that you decide that it's malingering rather than looking at that behavior in deciding that it is a

genuine mental illness of some kind?

A. Well, like any other disorder, disease, mental illness has certain specific symptoms that lead to a diagnosis. You know, you have a,b,c,d symptoms that show that the person has this particular mental illness. Now, in Mr. Eldridge's case, he didn't show those symptoms. He showed peculiar behaviors, inappropriate behaviors, but he didn't show any of the symptoms that could be lined up to say this is characteristic of this mental illness, therefore, my diagnosis is mental illness. He gave a scattered kind of presentation of different kinds of crazy behaviors, none of which fit into any known diagnostic category. Second thing is that his behavior is inconsistent. He doesn't do the same thing over and over again. He does different things at different times, which, again, is unusual, is not typical of mental illness that we know and would diagnose. Most lay people don't understand what mental illness really looks like and what causes a diagnosis of mental illness to be given, but they know a few things, they've seen tv, movies, things like this, they know

enough to show a few little things here and there, but they don't understand what the most important symptoms are, they don't understand what the critical symptoms are, they don't understand that you have to be consistent in these symptoms, that they just don't develop all of a sudden. All of these things went into the evaluation of Mr. Eldridge; and he came up very, very short. He simply did not fit any diagnostic category.

Q. Okay. So, to see if I understand you, you base your opinion on two things -- one is that the behavior was too extreme and too different so that it didn't fit into any known medical mental disorder?

A. That's right. His behavior was theatrical, it was dramatic, it was excessive, and it was inconsistent with any group or cluster of symptoms that would lead to a definite diagnosis of mental illness.

Q. And, so, it would lead you to believe that he was faking it because there's no such thing as what he was acting like?

A. That's right. That's the only way to explain his behavior.

Q. Then the second thing I think you said is that his behavior was inconsistent, that he would change at different intervals. Am I understanding you correctly?

A. Yes.

Q. If somebody then asked you, well, isn't it true that people with mental illness sometimes have different symptoms?

A. They do, yes.

Q. How would you explain that, then, to explain why you felt it was malingering rather than somebody who has a mental illness but is just exhibiting different symptoms at different times?

A. Well, because, even though he may have some different symptoms, the core symptoms, the critical symptoms, what the psychiatric residents learn in medical school are the four A's, for example. They give you a diagnosis of schizophrenia. Those things have to be present all the time. They don't change much. Now, perhaps the contents sometimes will change of a delusion, you know, one day you think that Mars is, you know, sending x-rays through your brain, next day the x-rays are coming from the C.I.A.,

you're going to have small, you know, differences like that, but the fact that he is exhibiting what we call thought insertion or thought broadcasting, you see, would be consistent, and Mr. Eldridge showed none of the core or critical symptoms of severe mental illness.

Q. Is there anything else that you feel would help explain to the jury your opinion back in October of 1993 regarding why you thought it was malingering? Anything else in that report that we haven't covered?

A. Well, I mean, I think the report speaks for itself, and, I mean, there is a list I made of about twenty things here that would indicate he was not really mentally ill. I might mention a couple just to emphasize what I am saying.

Q. You can mention all of them actually.

A. First of all, his personal hygiene was fine. Okay, once again, one of the things you very often see with the seriously mentally ill are the breakdown in personal hygiene and their ability to keep themselves neat. They're disheveled often, they smell bad because they

have not taken a shower. So, Mr. Eldridge was fine in this respect. The leg shaking is interesting. The leg shaking only really occurs as a medication side effect. You rarely see this kind of behavior without medication causing it. It's part of what we call tardive dyskinesia, which is a side effect of some of the tranquilizers that are used for some of the mentally ill people. Other thing is, of course, they keep their leg shaking constantly because it's not a voluntary thing, it's an agitation caused by the medicine, so you have the leg shaking constantly. Even the person looking at it is kind of, you know, bothered by it. He doesn't like it either but it keeps going.

Q. Let me stop you right there. Can you show me with your leg for just a second what you mean by leg shaking.

A. Well, kind of like this. It's hard to do yourself voluntarily because your muscles aren't being done that way by the medicine. I don't have medicine in me that does this, but it's kind of like a vigorous shaking.

Q. Like a jerking motion?

A. Yes.

Q. Short jerking motion?

A. Again, bad idea for Mr. Eldridge to pick this particular symptom because it's very hard to keep it up for fifteen or twenty minutes at a time; also hard to keep it up in your jail tank when you go back to your jail tank sitting there with a bunch of other inmates, got to sit there with your leg shaking twenty-four hours a day. That's pretty hard to do.

Q. You told me at some point he was prescribed Atavan. Just for clarification, would that sign or symptom, the leg shaking, have anything to do with Atavan?

A. No.

Q. So that couldn't of caused it?

A. He was given the Atavan after.

Q. Was he ever prescribed any other drugs beside Atavan?

A. According to my review of the records, he was never prescribed any type of psychiatric medicine except that he received that one shot to calm him down because he was agitated.

Q. To your knowledge, he was never under any kind of medication that would cause the leg jerking?

A. Not to my knowledge, no.

Q. He didn't keep up the leg jerking, so I guess it really wouldn't matter.

A. Right.

Q. What was the next sign that you can point to to show that it's malingering rather than some genuine mental illness.

A. Well, one of the more creative and dramatic symptoms that he showed, I think, is the head scratching. He started doing that when I first brought him into the room. He pretty well kept it up throughout the contact with him; he kept scratching his head so much he drew some blood on the top of his head, wasn't bad, but you could see some blood on the top of his head. It was noted, I think, one other time in the treatment notes he did this one other time. Again, this kind of behavior is what we call a compulsive symptom. This kind of behavior, if it were truly a symptom or behavior, would be happening repeatedly; it would be happening so much that he'd have to be restrained or something would have to be done with his hands if he really had done that as part of the mental illness.

Q. Let me stop you right there. He did that in front of you one time; is that right?

A. Right.

Q. Okay. Can you show the jury what you mean when you talk about head scratching?

A. Well, you know, his head is very close shaven, he was essentially very close-cropped. He had no hair really, it was all cut or shaved back or something. And he would just sit there and just do like this, keep doing it until about halfway through the interview you could see some little specks of blood start coming out of his scalp because he was rubbing so hard he was scratching with his nails too.

Q. So scratching with both hands backwards and forward on top of his head?

A. Yeah, uh-hum.

Q. You said it happened one other time. Do you know the date of the other incident?

A. It was at the next time he was on the treatment unit. It was somewhere around maybe December or so of '93 or January of '94.

Q. About?

A. Might be in my notes here. I think it's in Ms. Callahan's notes. Yes, that was in

the note upon admission for the second observation period, and that was in January of '93. Something like that, anyway. The admission note indicates that he was scratching his head at that time. But this behavior was not repeated during the rest of the time he was on the unit.

Q. So two times, to your knowledge?

A. Yeah. I am sorry, it may have been in October of '93 that he was admitted to the unit.

Q. Let me show you this note, see if it helps you or not. It may not.

A. Yeah, this is it. This is what, ten, 13, of '93.

Q. So, to your knowledge, it happened 10, 13 of '93. So when you saw him, which was 10--

A. 13, same day.

Q. 13. So two times in one day?

A. Yes.

Q. He made his head bleed?

A. It was not noted as repeating itself ever again.

Q. Why would that be significant?

A. Well, again, if this kind of behavior is occurring and he is doing something that's

kind of repetitive and kind of damaging to himself, you would see those behaviors occur on a regular basis.

Q. And you didn't?

A. And they didn't happen, no. Once again, it's inconsistent. He can demonstrate the behavior once or twice but then he can't keep it up. In the true mentally ill person, you would see those behaviors continually.

Q. What else? I think you told me about three things. Give me some of the things you could point to.

A. Well, another interesting inconsistency is at one point he said don't let them kill me, then later he said he wanted to die, which again doesn't really happen.

Q. Well, so, you're saying somebody with genuine mental illness would be one or the other?

A. Yes.

Q. Do you find people that have both or not?

A. Not in the same time period, no.

Q. Not like within the half hour?

A. No, you don't see that.

Q. What else can you point to?

A. He reported near the time of admission that he was hearing the voice of Willie. Again, that's in the treatment notes. He said nothing like this to me. It's also interesting that he had a struggle with psychiatric aids when they put him back into the holdover tank. Almost always, with the really mentally ill, people are rarely agitated or rarely combative. Sometimes they get that way because they don't want to leave the tank, they don't want to be brought out of the tank. In other words, they feel relatively safe at that particular moment. They don't want to come back and see me, I'm a stranger, they're suspicious of me, they don't want to have their safe place threatened, so they refuse to come out. The aids have to come in there and drag them out sometimes. But in Mr. Eldridge's case they had to drag him back in, so, once again, inconsistent.

Q. So he wanted to be with people I guess you would look at it?

A. Or at least he wanted to be in a place that he knew. I'm saying the genuinely mentally ill wouldn't want that.

Q. Right.

A. They don't like to be in strange places or seeing strange people. That makes them feel threatened. But in Mr. Eldridge's case, he didn't want to be put back.

Q. Is there anything else that you can point to?

A. Well, Mr. Eldridge has also around the time I saw him and consistently refused psychological testing. This is another hallmark of malingering, I would say. It's rare that you see mentally ill people who really don't want to do the psychological testing. Now, if they're really paranoid, really suspicious, they would sometimes refuse, but Mr. Eldridge does not really exhibit any paranoid traits, at least in terms of feeling that the staff or someone like that was going to harm him or that the other inmates around him were going to harm him, which is what you typically see. He would make general statements about don't let them kill me, things like that, but he never indicated that he was threatened by any of the staff or any of the other inmates, which again is inconsistent. So, anyway, the refusal of psychological testing is

often taken as an indication that they don't want to put themselves in position of having to do the test because, of course, they don't know how to look bad on a psychological test or what might be a bad response, and he consistently refused that throughout his stay on both times on the psychiatric unit.

Q. Are there any other things that you can point out at this time regarding signs that would lead you to believe that it's malingering?

A. That's pretty much everything for the October interview, yes.

Q. All right. I want to now then turn to the next visit, which is on February 18th of 1994. How is it that you got involved with this case again in February of '94?

A. Well, I think Doctor Silverman saw him again, I think actually the day before I saw him, and requested I think once again that I see him again as a follow up.

Q. When Doctor Silverman is asking you to give a second opinion, does he tell you his thoughts on the case? I mean, do y'all have a discussion about Mr. Eldridge?

A. No, we typically don't. We like to

form our own opinions. Now, I did talk to him after I saw Mr. Eldridge on October 13th.

Q. But Silverman saw him first, I guess, in October?

A. Right.

Q. Then you saw him. And, so, your testimony is that you two did not discuss why Silverman was asking for a second opinion other than he was asking for a second opinion; is that a fair statement?

A. That's a fair statement.

Q. And is that because he doesn't want to bias you to look for something or not look for something?

A. Right. Start with a clean slate and develop our own opinions independently of what other psychologists think and then we come together and discuss whatever our findings were.

Q. Have there been times when you disagreed with Doctor Silverman?

A. It happens occasionally.

Q. What about him disagreeing with you?

A. Yes. If that's the case, then next step would be to see him together, person together, see if we could resolve our

differences.

Q. So it's not like you felt you had to come to the same diagnosis as him?

A. No. It happens sometimes.

Q. Okay. So now we're talking about February of '94. And I guess at this point you both know that you both previously said he was a malingerer?

A. Yes.

Q. Tell me about that visit in February. What was the first thing that happened?

A. Well, this time I saw Mr. Eldridge in the holdover tank itself. In other words, I didn't bring him out to the interview room. I didn't know what to expect of his behavior, so I interviewed him actually in the day area of the jail tank itself, and where he had been there for a little while, I came into there, sat down at one of the metal tables that are actually welded to the floor, everything is stationary, then the aids brought him over, sat him down in front of me. And, so, the interview took place at that point.

Q. What was the first thing that happened? What did you do first or what did he

do first?

A. Well, once again, told him who I was, told him that I wanted to see him again, see if he was feeling any better, and once again started asking him about, you know, what's happened to him or how has he been feeling since I saw him the last time, and he said something like, the bossman hit me, told me just to sign the papers. And, so, then we had a conversation about who the bossman was. He kept doing like this, you know, trying to indicate a badge, although for some reason I guess he couldn't say the word badge, but he did that. Then he said he was tired, that he wanted to go home. His demeanor and composure was very different than the first time I saw it. There was no agitation, no getting upset, no working himself into a state, he just had kind of a depressed look on his face, said he was tired, he wanted to go home. Although he wasn't cooperative with me the second time, either. He really didn't answer any questions directly except to say what he did about the bossman in response to my question about how he was feeling. On this occasion, he also complained about they keep

moving me and moving me. When I asked why he was here, he stated, "I go to court, I don't make trouble." So this is the first statement on Mr. Eldridge's part that he knows something about a court, but it's also revealing that supposedly before now, before that time, he didn't know anything about anything. Certainly didn't know anything about why he was in jail or going to court. He then said something, "I'm just tired, I'll do whatever they want me to do." I asked him, "What do they want you to do, what do you mean?" He says he is tired again, he got up, he walked out.

Q. Okay. So how long did that visit last?

A. Well, only lasted about five or ten minutes.

Q. So he just walked out?

A. Right. And he was clearly irritable. But, you know, I kind of sympathized at that point with Mr. Eldridge because if I had been doing all the work he had been doing to fool everybody I'd be tired, too. But my interpretation of that is he's getting tired of the game but he was still playing. But, anyway,